

MESSAGE FROM THE GOVERNOR.

Austin, April 12, 1895.

To the Senate:

Senate bill No. 197 is herewith returned without approval.

The object of the act is to sanction and ratify the title of the Texas and New Orleans Railroad Company to the railroad and corporate rights and franchises of the Sabine and East Texas Railway Company, and to authorize the Texas and New Orleans Railroad Company to purchase, own and operate the railroad of the Louisiana Western Extension Railroad Company. The three corporations named were organized under the laws of this State. The Texas and New Orleans Railroad extends from Houston to Orange, a distance of 105 miles; the Sabine and East Texas Railway extends from Sabine Pass to Rockland, a distance of 102 miles; and the Louisiana Western Extension Railroad extends from Orange to the Sabine River, the State line, a distance of seven miles. The act presupposes a purchase of the Sabine and East Texas road by the Texas and New Orleans Railroad Company and equally implies, what is clearly the case, that the sale was without authority of law. Unless specific legislative authority be given for the purchase of the property and franchises of one railroad company by another, whether they be competing or not, no such power exists and its exercise is contrary to law and public policy.

R. R. Co. v. Morris, 68 Texas, 49.

R. R. Co. v. Rushing, 69 Texas, 306.

The capital stock and bonded indebtedness of the Louisiana Western Extension Railway Company is \$184,000, or \$27.164 per mile, and that of the Texas and New Orleans Railway Company is \$8,641,936 or \$82,304 per mile. The Sabine and East Texas Railway Company has a capital stock of \$300,000. This company, in its name, it seems has no bonded debt. It was sold in 1882 to the Texas and New Orleans Company, which took up its bonded debt and issued in lieu thereof bonds to the amount of \$2,575,000, which with the capital stock will give a stock and bonded indebtedness of \$28,750 per mile. It is provided by the act (section 2) that it shall not be construed to authorize any increase of the outstanding stock, bonds or other indebtedness of the Texas and New Orleans Railroad Company, or that of either of the other companies named, beyond the aggregate of stock and bonded indebtedness of said

companies, or such two or more of them as may be purchased. In the form of a negative, this is authority for an increase of stock, bonds and other indebtedness of the two companies to be absorbed to \$46,072 per mile, this being the aggregate indebtedness per mile of the three roads. The total value of the Louisiana Western Extension Railroad is put by the commission at \$16,086.81 per mile, and the Sabine and East Texas Railway at \$8,787.27 per mile. The law regulating the issuance of stock and bonds of railway companies, approved April 8, 1893, provides (section 2) that no bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever and secured by lien or mortgage on any railroad or part of railroad or the franchises or property appurtenant or belonging thereto, over or above the reasonable value of the said railroad property, and this is unquestionably contravened by the special law under consideration. A nominal organization of the two companies to be absorbed still exists, and it is quite easy to increase the indebtedness to the aggregate authorized before final amalgamation. Without such course the same result may be reached, for after consolidation the commerce of the two sold-out roads may be taxed to pay interest and dividends on the extraordinary and enormous indebtedness of the Texas and New Orleans road. At present, whatever may be the measure of a reasonable freight rate, the commerce of the Sabine and East Texas road may reach the Gulf or a connection at Beaumont with New Orleans, or at Colmesneil with other roads, with no greater tax than such as will yield operating expenses and interest and dividends on \$28,750 per mile. Under this act, if the railway measurement of rates be adopted, the basis of interest and dividends will be \$46,072 per mile. The injustice to the people along the line of this road is therefore plain, and will be more so with time and experience should this act become a law.

Another objection to the bill, is that the Sabine and East Texas road is a competing line with the Texas and New Orleans road, and the act is therefore in conflict with section 5, article 10, of the Constitution, which expressly prohibits the consolidation of competing lines. If these roads were operated independently, freight shipped out of the State eastward over the Sabine and East Texas road would have two outlets, thereby creating competition, one at Sabine Pass and another by connection at Beaumont with the Texas and New Orleans Railroad. With freight shipped over the

Sabine and East Texas road, and destined westward, through connections at Colmesneil this road would compete with the Texas and New Orleans road in the connection at Beaumont. As shown by the diagrams which follow, the case is similar to the attempted consolidation of the East Line and Red River Railroad with the Missouri, Kansas and Texas road, which the Supreme Court denounced in *Railroad Company v. State*, 75 Texas, 434, both because the latter was a foreign corporation and was a competing line (p. 448) with the former.

But this bill should not be considered alone, and these roads are competing in a broader sense than that already noticed. The attention of the Legislature was heretofore called to the operations in California and this State of a Kentucky corporation known as the Southern Pacific Company. In California it has grown to be easily the boldest and most hurtful monopoly in the history of the State. To such an alarming extent has it dominated commerce and imperilled the rights of the people, that the whole State is profoundly aroused against its corrupt and dangerous rule. Some idea of the condition of affairs there may be had from the following, taken from the report of a special representative of a great nonpartisan journal, and published in March:

"Every railroad in California is bonded for twice or more than twice its cost, and it has been declared again and again that the Southern Pacific system cost no more than \$15,000 a mile to build, yet it was bonded for from twice to three times that figure, and upon that sum it must pay 6 per cent interest. As one shrewd merchant put the case, 'the bonds represent three times its actual cost, and pay 6 per cent.' Two per cent interest even on their alleged value would not satisfy the foreign or American holders, yet 18 per cent on their true value is what the people of California have to pay. The Californians also have to pay the lion's share of cost of the maintenance of the roads upon a thousand miles of nonproductive and desert land.

"The extent of the monopoly which is maintained by the newest Big Four of California millionaires who own the Southern Pacific Company is greater than most persons outside the State imagine or would have believed possible. The so-called octopus which throws its iron suckers over the mountains and into all the richest valleys, is but one branch of the monopoly. The control it has upon the carrying business of the whole State is riveted to it by lines of steamships north, south, and east, and

in addition it picks up the small change that remains outside its bigger transactions by a monopoly of the street railroads, the ferries, and the suburban railroads in and around San Francisco, in the district of densest population, where one-third of the people of California reside."

Referring editorially to the report the paper says:

"They say they are in the power of a gigantic monopoly which owns the lines of road connecting them with the East or traversing the State, and most of the steamships plying to foreign countries. It is complained that every businessman in the State is in the hands of this monopoly, and that business is limited or actually destroyed by the enormous freight charges imposed on local traffic for the purpose of making good the losses incurred on the through traffic. This monopoly enters into municipal as well as State affairs, and corrupts the politics of both. The terrible tyranny and the extortion of which California complains are set forth in minute detail so that this article is an instructive study of what can happen to the body politic through the greed of a corporation whose only concern is to pile up fortunes for its owners as rapidly as possible."

This company was not content to operate in California. How it organized and reached beyond that State is shown by the testimony of Creed Haymond, its general solicitor, before the Pacific Railway Commission of Congress in 1838. After speaking of building the railroads from California through Arizona and New Mexico under three different charters, he said:

"Thus we reached El Paso in Texas. Then we built a line down in Texas to Houston under the charter of the Texas road, gathering in the road already completed—the Galveston, Harrisburg and San Antonio road. We ran on and nearly reached the boundary line of Louisiana. We acquired by purchase the road built by Mr. Morgan, and the steamers running from New Orleans and terminal facilities at New Orleans. These roads made a through line from the city of New Orleans to the city of San Francisco, one part under the control of the Central Pacific, another part under the control of the California corporation, another part under control of Arizona and New Mexico corporations, and the other part under the control of various Texas and Louisiana corporations.

"Numerous difficulties grew out of the fact that the lines were in separate ownership. So we asked Congress to con-

solidate all these lines of road in one company. That was right in the midst of the anti-railroad excitement in California, and the Legislature of California, by a close vote in the Senate, passed a resolution asking Congress not to do that thing. Then we went into the State of Kentucky and got a special charter chartering the Southern Pacific Company—not the railroad company—with a very large capital stock. The different roads interested took that stock and became, in fact, that corporation. That corporation did not buy the roads, but it purchased all the stock.

"We had acquired all the stock in all that property clear through to New Orleans, except a few shares in one or two of the Texas companies, which amount to nothing, so that virtually the Southern Pacific Company now owns the line of road running from New Orleans through to San Francisco, with the exception of a gap in California.

"Senator Davis: Do the Texas corporations, the Southern Pacific corporations and the Morgan corporation still exist?

"Mr. Haymond: They still exist, but we are the owners of all the stock.

"Senator Davis: Who makes the guarantee of interest to the Central Pacific?

"Mr. Haymond: The Southern Pacific Company.

"Senator Davis: Which Southern?

"Mr. Haymond: The Southern Pacific of Kentucky—this great corporation, which owns all these roads.

"Senator Dawes: It owns all of the roads until you get to the Morgan system?

"Mr. Haymond: And it owns the Morgan system also.

"Senator Dawes: The Southern Pacific Railroad Company of California leased to the Kentucky corporation?

"Mr. Haymond: Yes, sir; and made it virtually the owner. The same process was gone through with clear to New Orleans, so that the Southern Pacific not only owns the stock of these roads, and is, in fact, except perhaps as to the Louisiana corporation, the beneficial owner of the property. I am glad you ask these questions and bring the matter out so plainly.

"Senator Butler: As I understand you, the Kentucky company owns a majority of stock of all the lines of road?

"Mr. Haymond: Yes, sir; they own all the stock virtually.

"Senator Butler: They, then, are practically the owners of the property, are they?

"Mr. Haymond: That is true."

Pursuing this policy of purchasing the stock, the Southern Pacific Company

now owns, and through election of the directories, now operates the following roads: The Houston and Texas Central, the Galveston, Harrisburg and San Antonio, the Texas and New Orleans, the Austin and Northwestern, the Sabine and East Texas, the Aransas Pass, the New York, Texas and Mexican, the Louisiana Western Extension, and others. Not satisfied with owning the stock and directing the corporate affairs, this company, taking courage from successes elsewhere, now openly seeks to consolidate these lines. To this end, among other things, it has established an adroit and experienced lobby at the capital, which has proceeded with the work systematically and persistently, and with such effrontery, indelicacy and boldness as to excite more than marked comment by legislators and the public. Every intelligent and conscientious legislator will welcome reliable data and invite high-minded argument upon intricate and difficult legislation, but it is gratifying to know that the insinuating and importunate methods, the constant and indecorous attendance upon committees, the unseemly liberties and familiarity taken and assumed in the legislative chambers, the resort to every species of blandishment by which supposed personal obligations may be created, and the lavish and indiscriminate use of the pass, of this lobby, have justly provoked condemnation by a large number of the Legislature. The plan first adopted by this company was a general law authorizing consolidation in certain cases and under certain conditions. This plan has been abandoned and the purpose is now sought to be accomplished by several local or special laws of which that under consideration is one. It must therefore be judged as part of the general plan of the Southern Pacific Company to weld its interests in southeastern Texas into a carrying monopoly as dangerous as that which menaces the prosperity of California. In the East Line case, Chief Justice Stayton wisely said: "We further concur with the court below in the holding that railways, by reason of their relations with, control or management of other lines than their own, may become, within the meaning of the law, competing lines, though the railways owned by them may not in fact connect,"

and when it is recalled that the Southern Pacific system embraces practically all the roads of this immediate section there can be no question that the two roads named are rival and competing lines. Nor is this all. It is well known that the Southern Pacific Company is deeply interested in diverting exportations from

our coast to New Orleans, and every consolidation favors this hurtful disposition and enlarges the power to effect it. We have long enough been hewers of wood and drawers of water commercially. At the end of the long haul, our railroads mere feeders of foreign colossal systems, our local commerce taxed to meet deficiencies in foreign railway treasuries, our products and industries discriminated against. Texas will bless the day when her commerce shall turn to her coast, and sound policy demands that the postponement of that day by railway intrigue and manipulation should be opposed with all the power of the State.

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